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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,084	03/31/2004	Stephen T. Flock	D6462CIP2	7354
7590 Benjamin Aaron Adler ADLER & ASSOCIATES 8011 Candle Lane Houston, TX 77071			EXAMINER ROANE, AARON F	
			ART UNIT 3739	PAPER NUMBER
			MAIL DATE 08/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/815,084	Applicant(s) FLOCK ET AL.	
	Examiner Aaron Roane	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 25-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of specie XXVII, which read on claims 1-24, in the reply filed on 11/13/2006 is acknowledged.

Claims 25-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/13/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-7, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gifford, III et al. (USPN 6,171,321).

Regarding claim 1, Gifford, III et al. disclose a method of treatment for one or more substrates in an individual, comprising: positioning a means (490) of securing said substrate(s) proximally thereto, wherein said securing means is a susceptor or comprises a susceptor; applying energy to said substrate(s) or to said susceptor or to a combination thereof to generate heat therein; and fixing said substrate(s) via said heat thereby effecting treatment, see col. 48, line 15 through col. 49, line 18, particularly, col. 48, line 44 through col. 49, line 3 and figures 38A-39C.

Regarding claim 2, Gifford, III et al. disclose the claimed invention, an implant, see figures 38A-39C.

Regarding claim 3, Gifford, III et al. further disclose a metal, nickel-titanium, see col. 48, line 44 through col. 49, line 3.

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Regarding claims 4 and 5, Gifford, III et al. disclose the claimed invention as 1) a non-zero electrical conductivity and 2) diamagnetism, paramagnetism or ferromagnetism are inherent properties of any metal alloy.

Regarding claims 6 and 7, Gifford, III et al. further disclose a fastener having staples (for example 483), see col. 48, line 44 through col. 49, line 3 and figures 38A-39C.

Regarding claims 19 and 20, Gifford, III et al. disclose the claimed invention, see col. 48, line 15 through col. 49, line 18, particularly, col. 48, line 44 through col. 49, line 3 and figures 38A-39C.

Claims 1, 8-14 and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Naghavi et al. (USPN 6,451,044).

Regarding claim 1, Naghavi et al. disclose a method of treatment for one or more substrates in an individual, comprising: positioning a means (stent) of securing said substrate(s) proximally thereto, wherein said securing means is a susceptor or comprises a susceptor; applying energy to said substrate(s) or to said susceptor or to a combination thereof to generate heat therein; and fixing said substrate(s) via said heat thereby effecting treatment, see abstract, col. 11, line 52 through 15, line 67 and figures 1-12

Regarding claims 8 and 9, Naghavi et al. further disclose the securing means further comprises an adherend that is a protein or a polymer, see col. 20, line 3 through 22, line 62, in particular col. 21, lines 37-65.

Regarding claims 10-12, Naghavi et al. further disclose the claimed invention as conductive heating is inherent and pulsed ultrasonic energy is disclosed, see entire reference.

Regarding claims 13 and 14, Naghavi et al. disclose the use of RF energy to heat the stent, see col. 11, lines 52-67. It should further be noted that RF ranges from 3 Hz to 30 GHz.

Regarding claim 19, Naghavi et al. disclose the claimed invention, see col. 6, lines 9-27 and 44-51.

Regarding claim 20, Naghavi et al. disclose the claimed invention, see entire reference.

Regarding claims 21-24, Naghavi et al. further disclose the claimed controlling via infrared detection, see col. 16, lines 10-12, col. 17, lines 38-55.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi et al. (USPN 6,451,044) as applied to claim 14 above, and further in view of Kasevich et al. (USPN 5,057,106).

Regarding claims 15-18, Naghavi et al. further disclose the use of microwave radiation to heat the stent as an alternative to ultrasound, see col. 11. Naghavi et al. fail to disclose the use of an antenna, having a solid wire in the form of a coil. Kasevich et al. disclose an energy application catheter and teach the use of an electrically conductive (solid) wire in the form of a helix (coil) in order to radiate microwave energy, see col. 1-2 and figures 1-36. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Naghavi et al., as taught by Kasevich et al., to provide the device with a helix microwave antenna in order to deliver heating energy.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aaron Roane
August 9, 2007

A.R.

Henry M. Johnson, III
HENRY M. JOHNSON, III
PRIMARY EXAMINER